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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fiftieth session

SUMMARY RECORD OF THE 20th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 17 August 1998, at 10 a.m.

Chairman: Mr. GUISSÉ

later: Mr. ALFONSO MARTÍNEZ

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GE.98-13858 (E)

The meeting was called to order 10.05 a.m.

HUMAN RIGHTS OF INDIGENOUS PEOPLES

(a) INDIGENOUS PEOPLES AND THEIR RELATIONSHIP TO LAND

(agenda item 7) (continued) (E/CN.4/Sub.2/1998/15, 16 and 17)

1. Ms. MILLER (American Association of Jurists) said that in Nigeria the Shell Oil Company, which had been exploiting petroleum deposits in the territory of the Ogoni people for 35 years, was responsible for extensive pollution of the environment and specifically of the region's arable land, air and water resources. The Ogoni people did not derive any benefit from the taxes and various exploitation fees paid by Shell to the Nigerian State, and it was common knowledge that oil revenue was used to enrich corrupt Governments while the Ogonis had neither schools nor drinking water supplies.

2. On 4 January 1993, when some 300,000 Ogonis had organized a peaceful demonstration to protest against that situation, many had been arrested, imprisoned and tortured. Repression had become a daily practice and had culminated in the execution, on 10 November 1995, of Ken Saro-Wiwa, the writer and leader of the Ogoni people, together with eight other persons.

3. Members of the Internal Security Task Force had remained on Ogoni land so that Shell could continue its pumping operations. On 4 January 1998, the Task Force had arrested and tortured Baton Mite, the brother of Ledum Mite, who was Chairman of the Movement for the Survival of the Ogoni People (MOSOP), which therefore appealed to the Sub-Commission to support the Ogoni people and requested the Nigerian Government to act on the recommendations formulated by the Secretary-General's Observer Mission in April 1996.

4. Referring to the question of the referencing, study and marketing of the human genome and its impact on the rights of indigenous peoples, she said that genes or multicellular organisms - whether those of human beings, animals or vegetables - could never become private property since they were the result of nature's work over the ages; they could neither be bought, sold nor transferred, even when the person who claimed to be the original owner had freely given his consent. A parallel could be drawn in that respect with the sale of human organs, which constituted an offence under the legislation of several countries and which the World Health Organization had expressly rejected in its 1991 guidelines on human organ transplants. Genetic engineering should be carried out in the interest of human beings and their welfare and the profit motive should be of secondary importance for enterprises, groups or individuals.

5. Mr. CHAKMA (Asian Buddhists Conference for Peace) said that in Bangladesh, the Jummas of the Chittagong Hill Tracts, who had taken refuge in India because of the settlement on their land of hundreds of thousands of non-indigenous foreigners and the confiscation of huge areas of land by the army, had returned. Unfortunately, most of them were still awaiting the restoration of their houses and land. For that reason, his organization urged

the Bangladesh Government and the European Community, which was helping to resettle non-Jumma families and rehabilitate internally displaced Jummas, to do everything possible to remedy the situation as soon as possible.

6. He noted that successive Governments had denied the Jummas, who were hunter-gatherers, the right to use their natural resources by designating several forests as "protected areas", which were in fact exploited by logging companies with the authorization of State authorities. On 2 December 1997, a peace agreement had been signed, providing for the establishment of a land commission to settle disputes arising from conflicting land claims. Unfortunately, it had still not given effect to most of the provisions of the agreement, and particularly that on the establishment of the land commission and regional council.

7. He therefore called upon the international community, the United Nations and the Bangladesh Government to make every effort to have the land rights of the indigenous Jummas recognized and protected and to implement the peace agreement without delay.

8. Mr. GARCIA GARCIA (North South XXI) noted that, in various countries of Latin America, neoliberal policies and the privatization of public enterprises were resulting in increased unemployment and social inequality. In Mexico, for example, 10 million indigenous inhabitants lived in extreme poverty. In the State of Chiapas, 20,000 indigenous people had been obliged to abandon their land to escape the violent excesses of paramilitary groups. The situation was all the more alarming because the amendment of article 27 of the Mexican Constitution opened the way for the privatization of what little arable land was owned by the indigenous population. The indigenous movement was simply asking that its right to use the land should be respected, particularly as that right was recognized in ILO Convention No. 169. Yet the Government's answer had been to create paramilitary groups which killed the representatives of indigenous communities and had unleashed a reign of terror leading to mass displacements of the population.

9. In conclusion, his organization called upon the Sub-Commission to condemn unequivocally the flagrant and systematic human rights violations committed by the Mexican Government, and to invite it to respect the obligations it had assumed in signing the San Andrés Accords as well as to recognize the rights and culture of the indigenous inhabitants in accordance with ILO Convention No. 169.

10. Ms. NEURY (Centre Europe-Tiers Monde and World Federation of Democratic Youth) said that the lives and culture of the indigenous peoples in Colombia were threatened by transnational corporations which brought pressure to bear on the Government to obtain permits for the exploitation of the country's resources.

11. In the department of Tolima, about 100 Coyaïma and Natagaïma communities were in danger of being wiped out as a result of the gold mining activities on which a Canadian company wanted to embark along the Saldaña river. In the Boyaca and Arauca departments, the U'Was people were opposing the petroleum exploitation operations of the Occidental Petroleum Company in the so-called "Samoré Bloc" area. In Putumayo department, the K'fan people had been

dispossessed of 80 per cent of their land by oil interests. In Cordoba department, the "Urra Uno" dam and the planned "Urra Dos" dam were likely to imperil the ancestral lands of the Embera Katio people. Several thousand Cubeos were also suffering from the dramatic consequences of dam construction. Moreover, in the Chaparral region, for example, paramilitary groups were forcibly evicting inhabitants of areas through which major transnational means of communication, either canals or roads, were to be constructed.

12. The organizations he represented called upon the Sub-Commission to request the Colombian Government to recognize the autonomy of indigenous areas and ensure that they were not violated by transnational corporations, the army and armed groups, to invalidate the draft mining code prepared by the previous Government that called in question the recognized land rights of the indigenous inhabitants, to organize consultations in respect of any project likely to violate the integrity of the indigenous peoples and to engage in prior consultations with genuine indigenous authorities in accordance with ILO Convention No. 169.

13. The land problem, in its present form, was the result of colonization and expansion brought about by the western economic system. For decades, persons in the industrialized countries who left rural areas had found work in industry or in the services sector, or had emigrated; that however, was not possible in the countries of the south owing to the absence of industrial development. At the present time indigenous peoples and peasants who were obliged to leave their land because of structural adjustment policies crammed into shanty towns and swelled the number of persons forced to work in the so-called informal sector, which was very often synonymous with exploitation and poverty.

14. For that reason, to claim for the indigenous peoples their right to the land belonging to them was also - in addition to the reaffirmation of their right to continued existence and the development of their culture - to reaffirm their right to self-determination in economic matters and to ownership of the land as well as its produce and its preservation. Support for the indigenous peoples also implied solidarity with their organizations, such as the Sans Terre movement in Brazil and the Latin American coordination of peasants' organizations in order to bring about greater justice and solidarity in the world.

15. Mr. LEBLANC (Franciscans International) said that his organization was seriously concerned about the worsening situation of indigenous peoples in Mexico, especially in the States of Chiapas, Guerrero and Oaxaca. He recalled in that connection that on 12 June 1998, Mrs. Robinson, the United Nations High Commissioner for Human Rights, had expressed mounting concern about violations of the rights of the indigenous people of Chiapas.

16. On 16 February 1996, the Mexican Government had, under the auspices of the National Mediation Commission (CONAI) chaired by Bishop Samuel Ruiz, signed the San Andrés Accords with the Zapatista National Liberation Army, incorporating indigenous rights into the Federal Constitution of Mexico. Yet the Federal Government had submitted a bill to the Mexican Congress that was at variance with the Accords which, therefore, the Government had no intention of applying. Moreover, the Government was continuing to support paramilitary

groups that attacked indigenous communities. It was also seeking to pit communities and groups against one another and was using the unrest thus created as an excuse for increasing the militarization of the region. His organization also condemned the impunity enjoyed by those responsible for acts of violence and the torture of indigenous leaders in the States of Chiapas, Guerrero and Oaxaca.

17. In conclusion, his organization urged the Sub-Commission to give priority attention to systematic violations of the human rights of the indigenous peoples of Mexico, called on the Mexican Government to respect the human rights of indigenous peoples, to demilitarize the regions in which they lived and to ensure that security forces respected human rights and, lastly, asked the signatories of the San Andrés Accords to honour them and to resume their dialogue with all parties.

18. Mr. Alfonso Martínez took the Chair.

19. Mr. McNAUGHTON (International Human Rights Association of American Minorities) urged the Sub-Commission to do whatever was necessary to ensure the rapid establishment of a permanent forum for indigenous peoples within the United Nations system.

20. He drew attention to the situation in the State of Chiapas in Mexico where indigenous peoples were still being persecuted by their own Government. Although the Mexican authorities were trying to gloss over the situation by expelling hundreds of international human rights observers it was known that they were perpetrating atrocities, apparently with complete impunity. Thousands of innocent women and children were the victims of the strategy used by the Mexican Government to destroy the civilian supporters of the Zapatistas, apparently in accordance with the dictates of the United States Government and certain economic interests. Information available in the media revealed that, since February 1995, the United States Government, on the pretext of fighting drug traffickers, had provided the Mexican Government with a large military arsenal and that American officers and specialists had allegedly participated in the training of paramilitary groups in Mexico.

21. Yet the indigenous peoples of Chiapas should have the right to remain on their ancestral lands and to agree collectively to the use of communal land in accordance with the San Andrés Accords signed on 16 February 1996 between the Mexican Government and the Zapatistas. In March 1998, however, Mr. Zedillo, the Mexican President, had unilaterally amended the provisions of the Accords that would have provided the indigenous peoples of Chiapas with a broad measure of autonomy. When they had attempted to set up autonomous municipalities, as initially allowed under the Accords, they had been attacked by the army and police. Eight Zapatista supporters who had been injured during the attack on a village were taken prisoner by the military, and their mutilated bodies had been returned to their families a few days later by the so-called National Commission for Human Rights. At the present time there were about 20,000 displaced persons in the region; if they did not die of hunger or disease, they were likely to be massacred by the Mexican army and police and by paramilitary forces.

22. The Sub-Commission should therefore immediately conduct an investigation into the flagrant and massive human rights violations committed by the Mexican Government in Chiapas.

23. Mr. DÍAZ DE JESÚS (International Peace Bureau) said that he represented the Asemblea Nacional Indígena Plural por la Antonomía, a member of the Indigenous National Congress, in Mexico's Chamber of Deputies, where he was responsible for indigenous affairs.

24. The situation of indigenous peoples in Mexico was a source of increasing concern. Since January 1994, the population of the "militarized" zones was suffering from the excesses committed with impunity by the armed forces and paramilitary groups supported by the Government in violation of domestic law and the international instruments to which Mexico was a party.

25. The Sub-Commission should therefore adopt a resolution of a preventive nature guaranteeing the exercise in Mexico of human rights and fundamental freedoms in general and those of the indigenous peoples in particular. In that resolution, the parties to the conflict in Chiapas should be invited, with the assistance of a national or international mediation body to respect the San Andrés Accords and to emphasize dialogue rather than confrontation. The Mexican authorities, for their part, should be asked to respect the provisions of all international human rights instruments to which Mexico was a party, to put an end to all abuses, to release political prisoners, to investigate disappearances and to bring to justice and punish instigators and persons responsible for human rights violations. Moreover, the United Nations Secretary-General should be requested to submit to the Sub-Commission at its next session a report on the human rights and fundamental freedoms situation in Mexico and to propose appropriate constructive solutions. Lastly, the situation should be reviewed in 1999. A resolution of that nature would be the best way of commemorating the fiftieth anniversary of the Universal Declaration of Human Rights.

26. In conclusion, he wished to inform the Observer for Mexico according to whom an orchestrated partisan political campaign was being directed against his Government, that he was an independent deputy and did not owe allegiance to any political party. It was simply because justice was not being done in his country that he was obliged to appeal for it elsewhere, in accordance with the wishes of an elder from the mountains in the State of Guerrero. The Sub-Commission must adopt a resolution before the indigenous peoples of Mexico were victims of further massacres.

27. Mr. TIOUKA (Movement against Racism and for Friendship among Peoples) said that, although certain countries had taken decisive steps with a view to the recognition and development of indigenous peoples, France still imposed its political, legal and socio-economic system on six indigenous nations representing about 12 per cent of French Guyana's population.

28. Indigenous peoples had long been regarded as "primitive", implying that they were inferior, although since the age of enlightenment indigenous thought had had a profound influence on western societies and the development of the human rights concept. During the second half of the twentieth century, and as a result inter alia of the work of French thinkers such as

Claude Levi-Strauss, the value of indigenous cultures had been recognized and at the present time the importance of indigenous peoples and their traditional knowledge to the international community as a whole was generally accepted (even if for certain pharmaceutical companies such knowledge was above all a source of profit).

29. Yet France continued to disregard the most elementary needs of the indigenous peoples of French Guyana, denied them any right to cultural identity and imposed on them a policy of total assimilation which resulted in socio-economic imbalances. There was no mechanism in French Guyana, even of a consultative nature, through which indigenous interests could be expressed. With one exception, no school taught a language other than French. Its indigenous peoples were also threatened by the absence of control over economic activity and particularly by uncontrolled panning for gold which polluted rivers with mercury. Moreover, the French Government had authorized transnational corporations to engage in mining operations in the area that, at the Earth Summit in 1992, it had undertaken to designate as a national park.

30. Certain legal concepts must therefore obviously be reviewed if the identity of the indigenous peoples of French Guyana was to be taken into account. After referring in legal texts since 1952 to the indigenous peoples of French Guyana as "primitive peoples", "tribal peoples", "Amerindiens of French Guyana" and "communities traditionally deriving their subsistence from the forest", simply to avoid the expression "indigenous people" used in international law, France had nevertheless ratified the Convention on Biological Diversity which explicitly mentioned indigenous peoples and their identity. Despite French legal tradition, pluralistic interpretations of the French unitary State would be quite possible and the Constitutional Council for its part placed more emphasis on de facto equality than on de jure equality. Moreover, the French Constitution recognized the right to self-determination - which was of course different from that of secession - of overseas territories but not that of overseas departments. Yet according to a report published recently, at the request of the French Prime Minister, on the recognition of traditional regional languages without amendment of the Constitution, it was recommended that France should sign and ratify the Council of Europe's European Charter for Regional or Minority Languages. It even suggested that a constitutional amendment should be adopted to take those languages into account.

31. In conclusion, he said that the time had possibly come for the Governments of the world to recognize that international society was inevitably multicultural.

32. Mr. BIR THAPA (European Union of Public Relations) said that, in the document she had prepared for the current session (E/CN.4/Sub.2/1998/15), Mrs. Erica-Irene Daes, the Special Rapporteur, had provided valuable information on what was being done throughout the world to enable some 300 million indigenous peoples to exercise their rights. Whereas in the 1920s American Indians had come to Geneva to request the assistance of the League of Nations, only in 1970 had Mr. José R. Martínez Cobo been appointed a special rapporteur by the Sub-Commission to make an exhaustive study of the problem of discrimination against indigenous peoples. Yet despite the establishment of the Working Group on Indigenous Populations, the creation of

the United Nations Voluntary Fund on Indigenous Populations and the proclamation in 1994 of the International Decade of the World's Indigenous People, much still remained to be done.

33. In Nepal, for example, where there were several castes and sub-castes and dozens of tribes and ethnic groups, what had been done by the Government and by non-governmental organizations (NGOs) for indigenous peoples was not enough, since members of particularly disadvantaged indigenous groups were reduced to the status of porters or domestic servants, and certain indigenous languages and cultures were disappearing. In Kashmir, the Pandit community was also threatened with extinction because of terrorism that was continuing despite all the efforts made by a democratically elected Government in Jammu and Kashmir.

34. Indigenous peoples could preserve their way of life and achieve complete development only in a climate of peace and stability. It was therefore by promoting respect for the culture of those peoples, of their identity, their dignity and their rights that NGOs could best help them.

35. Ms. SPALDING (World Federation for Mental Health) said that for years her organization had been emphasizing the need for the United Nations system to establish mechanisms designed to ensure the same protection for natural sacred spaces (land) as for man-made sacred places (monasteries, temples and mosques), for the land on which many indigenous peoples lived and had lived for generations reflected their identity and indeed their very soul. It was therefore understandable that their forcible displacement, generally for economic or political reasons, had a negative psychological impact on them. As long ago as 1948, the Universal Declaration of Human Rights had recognized that everyone had the right to manifest his religion or belief in teaching, practice, worship and observance, the right to education and the right freely to participate in the cultural life of the community; yet none of those rights were possible when peoples were wrested from their ancestral lands.

36. A sand painting had been presented to the United Nations in 1995 by an artist of the Dine nation to commemorate the anniversary of its establishment. His gesture had been particularly symbolic since the uranium sands extracted from Dine land had also been used to produce the first atomic bombs. It was obvious that the presence of bulldozers could be psychologically devastating for those who held their land to be sacred. Unfortunately, Big Mountain, which was sacred to the Dine people as well as to the Hopi people, was still under threat. Her organization therefore hoped that the visit of the Special Rapporteur on religious intolerance to the region at the request of the Commission on Human Rights would be followed by that of the Special Representative of the Secretary-General on internally displaced persons so that the age-old roots of the Dine people could be preserved.

37. In conclusion, her organization expressed the hope that the psychological implications of population transfers, and in particular transfers of indigenous peoples, would be taken into account in the context of norms designed to protect mental health as well as international legal norms.

38. Mr. Guissé resumed the Chair.

39. Ms. BIDAULT (International Federation of Human Rights Leagues) drew attention to the need to protect the economic, social and cultural rights of the Mapuche-Pehuenche Indians in view of the construction of a hydroelectric dam on the Bio-Bio River at Ralco (Chile), since the flooding of a part of the Alto Bio-Bio could have extremely serious consequences for the communal life of approximately 100 local indigenous families whose ancestral habitat and ecosystem would be destroyed and their traditional way of life disrupted.

40. And yet Chile was one of the few States that had adopted legislation to protect indigenous peoples. Law No. L 19253 of 5 October 1993 on the protection and development of indigenous people (Indigenous Law) prohibited any annexation, seizure or expropriation of indigenous land, except among communities or members of the same ethnic group, without the authorization of CONADI (National Indigenous Development Company), a public body established under the Indigenous Law. Yet ENDESA (National Electricity Company) had embarked upon the initial stages of its project, namely, the construction of secondary roads, without waiting for CONADI's authorization, pressuring about 30 Pehuenche families to settle elsewhere. Pending CONADI's decision in the matter, her organization had recommended that the Government should do whatever was necessary to ensure the full application of the Indigenous Law. The project constituted a test case of the Chilean Government's policy towards the indigenous peoples, since the Pehuenche families concerned should be allowed complete freedom of choice, knowing exactly what the consequences of their choice would be.

41. The information received concerning recent developments was disturbing, since the President of the Republic of Chile had allegedly requested the Director of CONADI to resign just before it was to present its opinion on the question of exchanging land belonging to the Pehuenches. Moreover, the Chilean Government had allegedly not allowed CONADI to meet to take a decision as it was authorized to do under its regulations, with the result that the indigenous representative had withdrawn. Her organization was most concerned by the action of the Chilean Government which violated the independence of CONADI and revealed a lack of political will to apply the Indigenous Law. It therefore called upon the Government to make every effort to ensure the full application of that Law and, as a matter of urgency, to do whatever was necessary to protect the rights of the Mapuche-Pehuenche people.

42. Mr. DAHL (Inuit Circumpolar Conference) said that, at the second meeting of his organization held from 24 to 31 July 1998, which had been attended by Inuits from all regions of the Arctic as well as other indigenous peoples from other parts of the world, one of the main issues discussed had concerned the rights of indigenous peoples, the United Nations and the activities of the Working Group on Indigenous Populations, in which they had been participating.

43. His organization's position on the draft declaration on the rights of indigenous people, which was at present being reviewed by the inter-sessional working group established by the Commission on Human Rights, remained unchanged in that it supported the text adopted by the Sub-Commission in resolution 1994/45. The provisions of the draft constituted minimum standards and any attempt to weaken them would be unacceptable. It was essential that

the indigenous peoples should enjoy the right to self-determination as well as the right to determine their political status and freely to pursue their economic, social and cultural development.

44. The question of the establishment of a permanent forum for indigenous peoples within the United Nations system also deserved serious consideration. In the opinion of his organization, it was of the utmost importance that the forum should be established, that Governments and indigenous peoples should participate in it on a footing of equality, that the funds necessary for its operation should be included in the regular United Nations budget, and that it should be directly subordinate to the Economic and Social Council.

45. It was unfortunate that the study on treaties, agreements and other constructive arrangements between States and indigenous populations prepared by Mr. Alfonso Martínez (E/CN.4/Sub.2/1998/17 and Add.1), contained factual errors such as those noted by the Danish representative during the discussion of the matter in the Working Group on Indigenous Populations in respect of the home rule arrangement for Greenland. He hoped that they would be corrected in the final version of the document. It was also surprising that virtually all the indigenous inhabitants of Asia and Africa were excluded from the definition of the term "indigenous peoples" in the study, and he feared that Governments might exploit that point in pursuit of a divide and rule policy with respect to indigenous populations.

46. On the other hand, his organization welcomed the excellent preliminary working paper prepared by Mrs. Daes on indigenous people and their relationship to land (E/CN.4/Sub.2/1997/17 and Corr.1), which would contribute to a better understanding of the situation of indigenous peoples.

47. Mr. FIGUEROA (Foodfirst Information and Action Network), speaking on behalf of the Society for Threatened Peoples, drew attention to the plight of the indigenous communities in the Guayana region of Venezuela's Bolívar State. On 14 May 1997 the President of the Republic had promulgated Decree No. 1850 relating to the plan for the development and use of the Imataca forest reserve without consulting the indigenous peoples living in that area in violation of environmental standards and human rights. The Venezuelan Government, exercising its sovereignty and implying that there was only one people in Venezuela, denied the existence of indigenous peoples and their rights. Yet their existence was widely recognized, both at the national and international levels, and specifically by the country's Constitution and certain laws and in particular by the law approving ILO Convention No. 107 which recognized the right of indigenous peoples to the collective and individual ownership of the land on which they lived.

48. According to the 1992 census, 73.7 per cent of the 315,815 indigenous inhabitants lived in frontier security and defence zones. National parks, natural sites, forest reserves, such as the Imataca reserve, protected zones and biosphere reserves coincided with indigenous areas. The Government was thereby seeking to prevent the indigenous peoples from exercising their land rights: over a period of 26 years the body responsible for the implementation of the agrarian reform law had granted only 11 land titles to indigenous communities in the State of Bolívar. In December 1997, moreover, the Government of the State of Bolívar had granted mining concessions in the

Imataca reserve - which it was not authorized to do - before the Supreme Court of Justice had handed down its decision on the annulment appeal lodged by the ecological movement and the indigenous peoples concerning those concessions. Since then, mining operations in the reserve, and especially gold mining, had intensified. Furthermore, the Ministry of the Environment and Renewable Resources had, in April 1998, authorized the CUG-EDELCA Company to implement the binational Project for the Electrification of the South in the Imataca reserve and the Conaima national park, which UNESCO had declared to be part of the heritage of mankind. The work carried out had brought about the deforestation of vast areas and had destroyed the crops of indigenous communities. Over 2,212 hectares would be affected. In the circumstances the Sub-Commission should appoint a special rapporteur to look into violations of the fundamental human rights of the indigenous peoples of the Imataca forest reserve.

49. Mr. PARY (Indian Movement "Tupaj Amaru") said that the preliminary working paper on indigenous peoples and their relationship to land (E/CN.4/Sub.2/1997/17 and Corr.1) prepared by Mrs. Daes without doubt constituted the first response by a subsidiary body of the United Nations to the age-old claim of indigenous peoples to exercise their right to land and to the effective enjoyment of their natural resources. Unfortunately, however, Mrs. Daes had failed to take into account various economic determinants that had deprived indigenous peoples of their land. It was not enough to take note of the deep-rooted attachment, both physical and spiritual, of indigenous peoples to their land nor to seek solace in the idea that the unfair distribution of land was the result of colonialism. Instead, the problem should be viewed in the international economic context characterized by neoliberal development policies which favoured transnational corporations. Omnipresent throughout indigenous territories, they exploited natural resources which were of strategic value to the West without taking any account of their inhabitants. For that reason it was vital to include in the draft declaration on the rights of indigenous peoples an article stating that the indigenous peoples possessed an aboriginal right to collective property on their traditional land and territories, as well as the right to enjoy their renewable and non-renewable resources. His organization also hoped that account would be taken, in the draft resolution on the establishment of a working group to examine the working methods and activities of transnational corporations, of the specific proposals made in connection with the preparation of a code of conduct for transnational corporations in document E/CN.4/Sub.2/NGO/1998/12 submitted under agenda item 4.

50. Since no progress had been made towards the adoption of the final text of the United Nations draft declaration on the rights of indigenous peoples and in view of the attempts being made to weaken the legal force of its provisions in order to delay indefinitely the exercise of the rights of indigenous peoples, the Commission's Working Group should be given a broader and more precise mandate enabling it to examine in greater depth the provisions of the draft and approve them rapidly, so that it could be adopted by the General Assembly during the International Decade of the World's Indigenous People. The Working Group might benefit from the constructive observations on and the amendments proposed to the draft declaration by various NGOs, including his own, in documents E/CN.4/1998/NGO/31-35.

51. The Working Group on Indigenous Populations should continue its work, focusing more on standard-setting so as to make good any legal gaps in respect of the rights and fundamental freedoms of indigenous peoples, and draw up an international legal framework for the protection of the cultural and intellectual heritage of the indigenous peoples as a follow-up to the round table organized by the World Intellectual Property Organization (WIPO) on intellectual property and indigenous peoples. It could also make a valuable contribution to the preparation of a code of conduct for transnational corporations. However, his organization was not of the view that its seventeenth session should be held in Paris, as proposed by UNESCO for political and administrative reasons, since the French Government had consistently stated that there were no indigenous peoples in France - which undoubtedly explained why its representative refused to recognize the right of indigenous peoples to self-determination and their right to land. Furthermore, many of them would be unable to attend the session owing to complicated visa formalities and the high cost of living in Paris. It would be more logical and reasonable to hold the session in a country with indigenous peoples, such as Peru or Mexico.

52. His organization supported the establishment of a permanent forum for indigenous people within the United Nations system and was prepared to contribute to the preparation of clear and precise proposals by the inter-sessional ad hoc working group set up by the Commission in resolution 1998/20 to examine the question.

53. In conclusion, he noted with regret that, five years after the proclamation of the International Decade of the World's Indigenous People, whose main objective had been to strengthen international cooperation with a view to solving the crucial problems encountered by indigenous peoples in various fields, no tangible progress had been achieved. The financial and technical assistance hoped for by the indigenous peoples had not been forthcoming, and the requests of indigenous communities had been rejected on the pretext that resources were lacking. In reality the major western Powers who had plundered the wealth of indigenous territories lacked not money but rather the political will to contribute to the United Nations Voluntary Fund on Indigenous Populations.

54. Mrs. PARKER (International Educational Development) said that her organization was particularly concerned about the situation of the indigenous peoples of Mexico, and particularly the Indian people of Chiapas whose living conditions were deteriorating because of systematic violations of human rights and humanitarian law and the Mexican Government's recent policy of denying international humanitarian organizations access to the area.

55. That situation was due to the Government's inability to address the pressing concerns of the Indian people of Chiapas. Moreover, it had failed to respect the obligations it had assumed under the San Andrés Accords concluded in 1994 with representatives of Indian groups and the Zapatista National Liberation Army (EZLN). A presidential decree, promulgated subsequently, had reduced the scope of the provisions of the Accords and was even at variance with certain provisions of ILO Convention No. 169 which were reproduced in the Accords. For example, the right of the Indian people to follow their traditional procedures in dealing with crimes committed by members of their

community, providing that the decisions they reached would be validated by the State, had been restricted by the presidential decree that stated that such decisions might be validated, which made that right subject to the discretion of the State. Similarly, the application of the provisions of ILO Convention No. 169, recognized in the Accords, calling for respect for the lands and resources of the Indian peoples, and especially the use of their resources, was also made subject to the discretion of the State. Those were merely two examples of many that revealed the Mexican Government's blunt refusal to take into account matters which, in the view of the Indian peoples, constituted the nub of the dispute and of the San Andrés Accords.

56. Nor was the battle simply one of words, for the Government was clearly seeking to intimidate the Indian peoples by assassinating their leaders, militarizing their lands and in general trying to destroy their culture. That explained what was happening in Chiapas and why the Government was expelling so many international human rights observers to prevent them from seeing what was going on there. The question was whether the international community was prepared to take action, knowing that the survival of several indigenous Indian communities depended on its intervention, since the Mexican Government had clearly washed its hands of the problem.

57. Mr. BAHN (International Institute of Peace) drew attention to the fate of an indigenous community that was facing virtual extinction, not because of any socio-economic or even bio-environmental factors that affected most indigenous communities, but because of an upsurge of religious fundamentalism and terrorism. He was referring to the Pandit community of Kashmir, the members of which, well-educated and hard-working, had previously led a peaceful existence in the company of their Muslim brothers, but who had been obliged at the beginning of the 1990s to flee the land of their ancestors and the reign of terror imposed by a neighbouring country for political reasons.

58. Having abandoned all their possessions and found refuge in camps in other regions of India, that community, cut off from its roots and struggling to survive, was gradually losing touch with its language and culture which constituted its heritage. It was neither the first nor the last victim of the terrorism nurtured in the southern part of Asia by the country in question. The indigenous communities of Afghanistan had been its victims previously, and those of central Asia were now threatened. The Pandit community once again drew the Sub-Commission's attention to its plight and called upon it to do whatever was necessary to prevent its disappearance as a result of indifference, after which it would be mentioned only in a footnote in history books.

59. Mrs. HAAKANSON (Saami Council), referring to the report of the Working Group on Indigenous Populations on its sixteenth session (E/CN.4/Sub.2/1998/16), supported the proposal that the Working Group should hold its seventeenth session at UNESCO headquarters as a way of establishing closer cooperation with that agency. Most of the indigenous organizations endorsed the proposal, and it was unfortunate that opposition on the part of a few had prevented the Working Group from taking a final decision in the matter. Her organization welcomed the idea of a study on indigenous peoples, the private energy sector and mining, but considered it unnecessary to appoint a special rapporteur for that purpose; those issues should be examined in

connection with the study on indigenous people and their relationship to land undertaken by Mrs. Daes, since energy and mining activities affecting indigenous peoples involved the exploitation of natural resources on indigenous land.

60. Her organization commended the Office of the United Nations High Commissioner for Human Rights on the well-organized celebration of the International Day of the World's Indigenous People, and considered that in future it should be celebrated not on the first day of the Working Group's session as recommended in the Group's report (which would not only raise administrative problems but also prevent indigenous organizations from meeting and preparing for the session), but rather on the last day of its session.

61. The agenda proposed for the Working Group's seventeenth session was unsatisfactory since two items, including the main theme, were devoted to the question of indigenous peoples and their right to land; that topic was certainly essential but did not have to be discussed under two items especially as it had already been the main theme at the fourteenth session. Her organization therefore proposed that "education and culture" should be the main theme of the seventeenth session and that the Working Group should examine the question of indigenous peoples and tourism at that session, and not at the eighteenth session as proposed since tourism raised many problems for the indigenous peoples.

62. Lastly, her organization strongly supported the establishment within the United Nations system of a permanent forum for indigenous peoples in which they would be represented on a footing of equality with Governments, enjoy the right to vote and be able to participate in the preparation of the agenda; the Working Group was unable to ensure the full and effective participation of the indigenous peoples who had no say in its conclusions and recommendations. Her organization therefore urged the inter-sessional ad hoc working group to recommend that the Commission on Human Rights should request the Economic and Social Council to take the necessary action to establish a forum of that nature.

63. Mr. CONDORI (Indian Council of South America) said that although the work of the Working Group on Indigenous Populations had promoted recognition of the rights of indigenous peoples by encouraging a large number of countries to adopt legislative and constitutional reforms, those peoples were still regarded as second-class citizens and had virtually no say in decisions affecting their future. If that situation was to be corrected, communication between the people themselves and the organizations representing them had to be improved and information disseminated about their rights and about matters affecting them that were discussed by the United Nations. That was precisely what was being done by his organization which was participating in the publication of information bulletins and had established its own Internet site.

64. The Working Group offered the only hope of making the situation of indigenous peoples known; in some cases their situation was tragic, the Yuracares Indians in the eastern part of Bolivia, for example, being threatened with extinction by disease (leishmaniasis). His organization hoped, on behalf of all those peoples, that the Working Group would continue

to meet at Geneva and ensure that all representatives of indigenous peoples, whose numbers were increasing and who often came from afar, would be able to take the floor at its sessions.

65. In conclusion, his organization thanked the Special Rapporteur on treaties, agreements and other constructive arrangements between States and indigenous populations, the Special Rapporteur on indigenous peoples and their relationship to land, as well as all the experts on the Sub-Commission, for the extremely valuable work they were doing on behalf of the indigenous peoples.

66. Mr. LITTLECHILD (International Organization of Indigenous Resource Development) said he welcomed the first round table organized by WIPO on the intellectual property of indigenous peoples; WIPO should continue its annual round tables and also convene a global conference on indigenous intellectual property. He emphasized the importance of the question of education and language, which had been considered by the Working Group on Indigenous Populations at its sixteenth session, and noted that what was needed was not more resolutions but action to implement existing international instruments. He supported Mrs. Daes' recommendation on improving access of indigenous peoples to all forms and levels of education.

67. He urged the Sub-Commission to recommend that the High Commissioner for Human Rights should take a decision to the effect that the World Indigenous Nations Games (WIN Games) constituted an official activity of the International Decade of the World's Indigenous People. He also urged member States which had not yet ratified ILO Convention No. 169 to do so. His organization was in principle in favour of holding one of the Working Group's future sessions at UNESCO headquarters, but he would inform Mrs. Daes of its final decision after she had received a mandate from member nations.

68. His organization would very shortly communicate its observations on the working paper on indigenous people and their relationship to land (E/CN.4/Sub.2/1997/17) to the Special Rapporteur. That study was extremely important and constituted a follow-up to the final report on treaties. One of the main problems encountered by indigenous populations was that while it was very easy to lose land it was extremely difficult to add land to existing reserves, or reincorporate lost land in reserves, even by buying it back. The crux of the matter was therefore the property rights of indigenous peoples to their land and their natural resources.

69. The final report on treaties contained long-awaited conclusions and recommendations which confirmed the validity of the basic principles championed by the four Cree Nations concerned by Treaty No. 6, namely, that the Treaty was an international agreement signed by nations, that it could be amended only with the free consent of the peoples concerned, that it confirmed their right to self-determination, and that its spirit should be respected. His organization hoped that those conclusions would not be changed and recommended that a global conference on the question, preceded by preparatory meetings, would be organized in the context of a mid-term review of the International Decade. It was encouraging to note in that respect that the Working Group had proposed that a seminar on the conclusions of the final report should be organized in the first quarter of 2000. The Nations concerned by Treaty No. 6 were prepared to host it. In conclusion, having regard to the workload represented by the consideration of the problems of

some 300 million indigenous peoples, his organization requested the Sub-Commission to recommend a substantial increase in the resources and staff of the Office of the High Commissioner for Human Rights.

70. Mr. KOJI LI (Human Rights Advocates) noted that, after years of indifference, the United Nations had since 1989 been turning its attention to human rights violations in Myanmar, the main targets being ethnic groups living in mountainous border regions. Those "ethnic groups" more closely resembled the indigenous societies defined by the Sub-Commission's first special rapporteur in 1991. Having lived on their ancestral lands for centuries, they had managed to preserve their independence and cultural identity and were determined to resist any attempts by the Myanmar Government to "Burmanese" them.

71. The situation of ethnic groups in Myanmar was a good illustration of their special relationship with their land, which was the main source not only of their food, water, medicine and construction materials, but also of their cultural identity, their history, their religious beliefs and spiritual consciousness. Policies aimed at driving those peoples from their land, such as the forced relocation programmes in Myanmar, broke that vital link and destroyed the balance between the people, the land and the environment. The brutality which was practised against indigenous communities in Myanmar and which was documented each year by the Special Rapporteur was a serious threat to their survival.

72. Protection of indigenous civilizations and cultures implied protection of the environmental and natural resources of indigenous peoples and their protection against expropriation. The Government of Myanmar was negotiating the construction of a series of dams whose effects might well be catastrophic for the peoples concerned, who were not consulted and had no possibility of redress. Another serious problem faced by the indigenous peoples was collusion between the Government and multinational corporations. In Myanmar, Total and Unocal had funded a gas pipeline crossing the Mon and Karen States and whose construction had allegedly involved forced labour. Transnational corporations must be held accountable for their activities which had a negative impact on indigenous peoples and their land rights.

73. The situation of ethnic groups in Myanmar had deteriorated drastically in the previous 10 years. The international community offered the only hope for those groups, and the International Decade of the World's Indigenous People was probably the best way of making their problems known. They should therefore be informed by NGOs, which in Thailand and neighbouring countries were defending their interests, of the programme of activities of the Decade; they should also be encouraged to participate in such activities and to identify their needs.

74. In conclusion, his organization urged the Sub-Commission to continue the study on indigenous peoples and their relationship to land in the light of the experience of ethnic groups in Myanmar, and requested it to ensure that the indigenous peoples of the Asia and Pacific region could participate in the activities of the International Decade.

The meeting rose at 1.10 p.m.

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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fiftieth session

SUMMARY RECORD OF THE 21st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 17 August 1998, at 3 p.m.

Chairman: Mr. FAN Guoxiang
(Vice-Chairman)

later: Mr. GUISSÉ (Chairman)

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GE.98-13862 (E)

In the absence of Mr. Guissé, Mr. Fan Guoxiang, Vice-Chairman, took the Chair.

The meeting was called to order at 3.10 p.m.

HUMAN RIGHTS OF INDIGENOUS PEOPLES:

(a) INDIGENOUS PEOPLES AND THEIR RELATIONSHIP TO LAND

(agenda item 7) (continued) (E/CN.4/Sub.2/1998/15 and 17)

1. Mr. KAISIÈPO (Survival International) said he welcomed the fact that the Working Group on Indigenous Populations had taken steps to start a dialogue with the private sector; it was important to establish a relationship based on mutual respect and understanding. He supported the suggestion that the dialogue process should be entrusted to Mrs. Daes.

2. He urged that the definition of "land" should not be restricted but should include also marine resources: the sea was of economic, environmental, traditional and cultural importance to many indigenous peoples, and its resources were vital for their development and survival.

3. Ms. PEREZ DUARTE (Observer for Mexico) said that, having recognized that diversity was the source of its cultural richness, her country was slowly but surely transforming itself into a State in which pluralism and productive coexistence were celebrated. The poverty, inequality and marginalization in which much of the indigenous population lived resulted from mistaken efforts in the past to create a homogeneous society. The claims of indigenous peoples to land, administration of justice, services, infrastructure, political rights and self-determination had been acknowledged and a new alliance between indigenous peoples and the State was being forged. Indeed, the President had put before Congress a proposal for a social pact between the indigenous peoples, civil society and the State to improve every aspect of those peoples' living standards. Two further bills were also before Congress.

4. The individual states of the Federation were undertaking similar reforms. Campeche had reformed its Constitution to guarantee respect for cultural diversity and non-discrimination against indigenous peoples. Oaxaca had adopted, in May 1998, the Rights of the State's Indigenous Peoples and Communities Act, which provided for self-determination and self-government for indigenous communities and committed the state to protecting them and respecting their territory and legal systems. In July 1998, Quintana Roo had adopted a similar Act, setting out the state's obligations and enshrining the indigenous peoples' right to establish their own social, economic and political organization.

5. In Chiapas, the tension in two of the nine regions making up that state had led to legislative initiatives of a different nature: the government had adopted a State Agreement for Reconciliation in Chiapas and set up the State Development and Reconciliation System, one aspect of which was to hand power back to local communities.

6. The Federal Government had also taken action in other fields: it was extending health education, improving the road network and promoting economic growth and employment by helping indigenous communities to help themselves. Regarding the disgraceful situations described earlier in the day, her delegation would make a statement under agenda item 9. Mexico was strongly committed to the creation of a new social pact whereby, through dialogue and negotiation, historic difficulties could be overcome and a new dynamic of national development set in train.

7. Mr. Guissé took the Chair.

8. Mr. WEISSBRODT said that the Special Rapporteur had followed up her excellent preliminary working paper on indigenous people and their relationship to land (E/CN.4/Sub.2/1997/17 and Corr.1) by a less ambitious progress report (E/CN.4/Sub.2/1998/15), detailing a few developments that had occurred during the past year. Mrs. Daes had contributed to an understanding of the relationship between indigenous peoples and their lands in all its social, cultural, spiritual, economic and political dimensions. She had also stressed the significance of the collective and inter-generational nature of the relationship, which was reflected in the fact that the continuing dispossession of lands went hand in hand with an alarming decline in population among indigenous people.

9. It was clear that the survival of their culture depended on guaranteeing them the lands and resources needed for sustainable economic development and a degree of self-sufficiency. Mrs. Daes did, however, point to some hopeful indications of increasing recognition for indigenous land rights, notably in the preliminary decisions and friendly settlements of the Inter-American Commission on Human Rights regarding indigenous land rights in Nicaragua and Paraguay. He looked forward to her final working paper, for which her mandate should, if necessary, be extended.

10. As for the final report of the Special Rapporteur on treaties, agreements and other constructive arrangements between States and indigenous populations, which had been circulated informally, he noted that Mr. Alfonso Martínez had analysed diverse cases in about 20 countries and provided useful information for the understanding of some of the issues in a complex field. The report concentrated on a few countries in North, Central and South America, northern Europe and the Pacific. It briefly mentioned the situation in Botswana, the Indian subcontinent, Japan, Kenya and Sierra Leone but, with those exceptions, did not cover Africa or Asia because, according to his definition of indigenous peoples, he had apparently found no such peoples in those continents.

11. He regretted that the Special Rapporteur had been unable to accept the suggestion that a larger number of States should be included; indeed, he had limited his study even more explicitly by announcing a very restrictive definition of indigenous peoples, a definition that had not been accepted at the most recent session of the Working Group on Indigenous Populations.

12. The report's conclusions and recommendations were, however, generally modest and sensible. He agreed with the report as to the need for respect of treaties and other agreements between States and indigenous peoples, including the application of the doctrines of customary international law.

13. He hoped that the Special Rapporteur would take into account for the formal publication of the report the comments made in both the Working Group and the Sub-Commission, although it might no longer be possible at such a late stage to include the missing continents and countries. Mr. Alfonso Martínez had frequently acknowledged the great difficulties he had experienced in dealing with a very substantial task. It might be better for him to note the omission of some situations rather than to impose a severely restrictive, and possibly misleading, definition of indigenous peoples. The alternative would be to prolong the study still further, but, as an art critic had once said, "no great work of art is ever completed, but only abandoned".

14. Mr. ALFONSO MARTÍNEZ welcomed Mr. Weissbrodt's comments; he only regretted that the unavailability of the document in French and Spanish prevented other experts and organizations from commenting fully. The study had indeed been beset with difficulties, some of a personal nature but mostly due to the fact that the Centre for Human Rights had not been able to guarantee a standing consultancy, as it had for other studies. His original mandate had been extremely focused, but with the passage of time the scope of the study had broadened to include the background to treaties and an historical analysis of the gradual but relentless dispossession of ancestral lands suffered by indigenous peoples and its consequences.

15. He had had to limit the number of countries to which extensive treatment was given, partly because primary and secondary sources were often hard to come by or, as in the case of the northern part of the territory of the former Soviet Union, completely unavailable. He denied, however, that he had been over-selective; he had merely differentiated between countries with colonial Governments and those with Governments made up of non-indigenous people.

16. At no time had he denied the existence of indigenous peoples in Africa and Asia. It was merely that the working definition of "indigenous peoples" was unacceptable, since it excluded other nations or ethnic groups sharing the same territory. A nationhood was often shared between several States, a legacy from the colonial past. The term "indigenous" was an outmoded one; it had been dreamed up by non-indigenous peoples to assert their supremacy over the original peoples of a given territory. In fact, all the peoples in Africa and Asia were indigenous, both those in power and those who felt deprived of their rights within a given nation State. The issue of so-called "indigenous peoples" should thus be viewed from another perspective closer to that of the Working Group on Minorities.

17. He was aware that his views were controversial, but debate was only to be welcomed. He, for one, was not ashamed of expounding a dissident or minority view. Expanding upon Mr. Weissbrodt's parallel with a work of art, he pointed out that artists like Michelangelo and Picasso had not been appreciated at first.

18. Two delegates at the previous meeting had complained of the lack of transparency of the Working Group on Indigenous Populations. However, the same methods of work had always been followed, which involved listening to all views before reaching conclusions. Two other delegations had reproached the Working Group for deciding to postpone acceptance of the invitation by the United Nations Educational, Scientific and Cultural Organization (UNESCO, to meet in Paris the previous year. That decision had been taken at the request of 17 indigenous organizations which had addressed a letter to Mrs. Daes pointing out that there was no possibility of reproducing in Paris the established lodgings and logistic facilities habitually made available to indigenous representatives by the Geneva Documentation Centre of Indigenous Peoples (doCip). The visit had been postponed, not cancelled.

19. Regarding the agenda for the following year, it had been decided to focus on the fundamental issue of land rights in view of the desire in some quarters to reduce indigenous issues to an educational and cultural question. Education, culture and health would not, of course, be neglected.

20. Although the proposed permanent forum for indigenous peoples had received much support, the Working Group on Indigenous Populations, namely, the only permanent forum which already existed, should not be disbanded too hastily in favour of a body whose parameters still remained vague. Crucial questions relating to the functioning, funding and membership of the proposed body had still to be decided. As two Governments had clearly indicated at the meeting with the Bureau of the Commission, it would not be financially possible for such a forum to coexist with the Working Group.

PREVENTION OF DISCRIMINATION AGAINST AND THE PROTECTION OF MINORITIES (agenda item 8) (E/CN.4/1998/18)

21. Mr. EIDE, introducing the report of the Working Group on Minorities on its fourth session (E/CN.4/Sub.2/1998/18), said that deliberations within the Working Group had focused on the need to improve minority-majority relations through practical realization of the Declaration on the Rights of Persons Belonging to Ethnic, Religious or Linguistic Minorities. Two non-governmental organizations (NGOs), Minority Rights Group and International Service for Human Rights, had organized a seminar on human rights and the media held immediately prior to the session and their recommendations were to be found in annex I to the report.

22. The Working Group had discussed a number of issues including a "Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities" (E/CN.4/Sub.2/AC.5/1998/WP.1). The discussions had focused on situations in various parts of the world, on approaches at the bilateral, regional and global levels and on the role of United Nations bodies, specialized agencies and NGOs; the report contained a summary of the issues covered.

23. The Sub-Commission was referred in particular to the Working Group's examination of possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments (paras. 92 to 95) and issues relating to the forcible displacement of populations (para. 96).

24. Members of the Working Group had agreed to prepare working papers on: conflict prevention in situations involving minorities, the existence and recognition of minorities, multicultural and inter-cultural education, citizenship and the rights of non-citizens and universal and regional mechanisms for minority protection.

25. The Working Group had also recommended the establishment of a voluntary fund to enable a greater participation of minority representatives at its sessions. The Declaration should be translated into minority languages and promoted more widely, especially in the developing world, where many people were unaware of its existence. Further conclusions and recommendations were contained in paragraphs 102-111 of the report.

The meeting rose at 4.25 p.m.